

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

KITTY GRAHAM,

Plaintiff,

vs.

**THE COLONIAL BANCGROUP, INC.
and COLONIAL BANK, N.A.,**

Defendant.

CIVIL ACTION NO.:

2:06CV270 - WKW

**DEFENDANT THE COLONIAL BANCGROUP, INC.'S
MOTION TO DISMISS**

COMES NOW Defendant The Colonial BancGroup, Inc. ("BancGroup") and pursuant to Fed. R. Civ. P. 12(b)(6) files its Motion to Dismiss the claims asserted against it in the above-captioned lawsuit. In support hereof, BancGroup states as follows:

INTRODUCTION

On March 24, 2006, Plaintiff Kitty Graham ("Plaintiff") filed this lawsuit, alleging gender and age discrimination claims against BancGroup and Colonial Bank, N.A. ("Colonial Bank"). BancGroup employs less than the minimum number of employees required to be covered by Title VII of the Civil Rights Act of 1964. As a result, Plaintiff's claims against BancGroup are due to be dismissed.

ARGUMENT

- **BancGroup did not employ fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and as a result, is not covered by Title VII.**

In order for an employer to be covered by Title VII, it must have employed fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or

preceding calendar year. *See Steele v. Offshore Shipbuilding, Inc.*, 867 F.2d 1311, 1315 (11th Cir. 1989) (citing 42 U.S.C. Sec. 2000e(b)). The “current” year is defined as the calendar year in which the alleged discrimination occurred; the “preceding” year is the “year prior to that year.” *See Dumas v. Town of Mount Vernon*, 612 F.2d 974, 979-80 (5th Cir. 1980); *see also* 2 Barbara Lindeman & Paul Grossman, Employment Discrimination Law, 1304-07 (1996). Accordingly, for purposes of this analysis, the “current” year is 2005 (the year in which Plaintiff’s purportedly discriminatory termination occurred) and the “preceding year” is 2004. In neither of these years did BancGroup employ fifteen or more individuals as defined by Title VII. *See* Affidavit of Tara Gibson, attached hereto as Exhibit 1. As a result, Plaintiff cannot assert her Title VII claims against BancGroup, and therefore BancGroup is entitled to be dismissed from this lawsuit.

WHEREFORE, PREMISES CONSIDERED BancGroup respectfully requests that this Court enter an Order dismissing Plaintiff’s claims against it with prejudice for failing to state a claim upon which relief can be granted.

MILLER, HAMILTON, SNIDER & ODOM, L.L.C.

/s/James A. Patton, Jr.

James A. Patton, Jr. (ASB-6243-T77J)
505 20th Street North
1200 Financial Center
Birmingham, Alabama 35203
Phone: (205) 226-5200

**THE COLONIAL BANCGROUP, INC., AND
COLONIAL BANK, N.A.**

David B. Byrne, Jr. (ASB-0354-R69D)
General Counsel
One Commerce Street
Montgomery, Alabama 36104

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon counsel of record via U.S. Mail:

Kitty Graham, Pro Se
P.O. Box 240597
Eclectic, AL 36024

DONE this the **18th** day of April, 2006.

/s/James A. Patton, Jr.

Of Counsel